Supreme Court, U. S.
FILED
MAR 23 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1976

NO. 76-1220

WILLIAM E. MARTZ

Appellants

V.

Pennsylvania Department of Transportation
BUREAU of TRAFFIC SAFETY,

Appellee

ON APPEAL FROM THE SUPREME COURT of PENNSYLVANIA

JURISDICTIONAL STATEMENT

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March 3, 1977

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IN THE

SUPREME COURT OF THE UNITED STATES

October TERM, 1976

NO.

WILLIAM E. MARTZ,
Appellant

v.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC SAFETY,
Appellees

On Appeal from the Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT

The Appellant appeals from a Per Curiam Opinion entered on November 3, 1976 denying Appellants Petition for Allowance of Appeal from

a decision of the Commonwealth Court of Pennsylvania entered on March 15, 1976, which upheld on Constitutional grounds. The provision of the Pennsylvania Motor Vehicle Code enacted by the Legislature of the Commonwealth of Pennsylvania.

Appellant submits this statement to establish that the Supreme Court of the United States has jurisdiction of the appeal, and that the appeal presents substantial questions involving the Constitution of the United States.

OPINION BELOW

The Opinion and Order of the Commonwealth Court of Pennsylvania is reported in Pennsylvania Commonwealth Court Reports volume 24 page 26, and is hereto attached as Appendix "A". The Opinion of the Trial Court of Northumberland County, Pennsylvania is unofficially reported in the Northumberland County Legal Journal.

JURISDICTION

This suit was initially brought pursuant to provisions of the Vehicle Code, Purdons 75, vehicles providing for appeals from the decision of the Department of Transportation. It requested that a Supersedeas be restored to him and that upon conclusion and cause that his license be restored. The Petition argued that the hearing conducted by the Department was not appropriated to the nature of the case. On March 24, 1975 the Common Pleas Court after holding a de novo hearing for the purpose of ascertaining whether or not the Appellant was so convicted, upheld the statutes and dismissed the appeal.

The Appellant whereupon appealed to the Commonwealth Court of Pennsylvania, which upheld the decision of the lower court, Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, which denied such petition, thereupon filing a Notice of Appeal to the Clerk of Court

of the Supreme Court of Pennsylvania for your Honorable Courts consideration.

The jurisdiction of this Court to review the decision of the Supreme Court of Pennsylvania by direct appeal is confined by Title 28 United States Code section 1257 (2) and 2101 (b).

QUESTIONS PRESENTED

The Pennsylvania Supreme Court has held as constitutional and the requirements of the Vehicle Code which provides that upon receipt of a certified record of conviction for driving while under the influence, the Department shall revoke the license of the operator for one year.

The questions presented are:

1. Whether the certified record of conviction as forwarded to the Department of Transportation by the Clerk of the Court of the County of conviction serve as a rational basis in and of itself for the revocation of a drivers license.

2. Whether the revocation of a drivers license without an evidentiary hearing upon merely a certified copy of a conviction of a criminal matter constitutes an unreasonable, unnecessary, and overly broad invasion of the Appellants property rights in violation of the 1st, 5th, 9th and 14th Amendments to the United States Constitution without a rational basis or in the absence of a compelling need for such information.

3. Whether a certified record of conviction is so lacking in reasonableness without standards and guidelines so as to violate the Appellants rights to due process guaranteed by the 14th Amendment of the United States Constitution.

STATUTES INVOLVED

The 5th, 9th and 14th Amendment to the Constitution of the United States and Article 75 section 1037 and 616 (a) (1) of the Motor Vehicle Code.

STATEMENT

On January 21, 1974, Appellant, a resident of Northumberland County, Pennsylvania and a professional truck driver, plead guilty in the Court of Common Pleas of Northumberland County, Criminal Division, to a violation on January 6, 1973, of Section 1037 of the Motor Vehicle Code, supra, operating a motor vehicle while under the influence of intoxicating beverages. Pursuant to having received a copy of conviction as certified by the Prothonotary of Northumberland County, the Department of Transportation sent a letter of Revocation to the Appellant. The Appellant requested a hearing and had a hearing, at which time the following objections were noted; 1) no opportunity for testimony in rebuttal or to clarify the record, no opportunity for counsel to participate, no opportunity for questions, and no opportunity to take notes; subsequently the Appellant asked for an Appeal of the Notice of Revocation. At the trial, the Commonwealth

proved the conviction; testimony of the Appellant showed that at the hearing he had no opportunity to present testimony as to his driving competence. Argument before the Court indicated that the only relevent evidence permited in such an appeal was whether or not the Appellant was in fact convicted of operating a vehicle while under the influence. A copy which is attached and marked Appendix "B".

THE QUESTIONS ARE SUBSTANTIAL

1. SECTION 616 (a) (1) CONSTITUTES AND UNREASONABLE, UNNECESSARY AND OVERBROAD INVASION OF THE APPELLANTS RIGHT TO DUE PROCESS OF LAW IN VIOLATION OF THE 5TH, 9TH, AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

This Court has recognized that once licenses are issued, as in Appellants case, a tractor trailer driver, their continued possession may become essential in the pursuit of a livelihood. BELL v. BURSON, 402 US 535, 292 L. Ed. 90, 91 S. Ct 1586. As was stated in DENT v. WEST VIRGINIA

129 US 114, 9 S. Ct. 231, the right to earn a livelihood is one of the most fundamental and most valuable rights as a citizen. A person's business, occupation or calling is clearly "property" with the meaning of the constitutional provisions as to Due Process of Law, and the Constitutional guarantee of the right of property protects it not only from unjustifiable impairment or confiscation by legislature edict, but also from any unjustifiable impairment or abridgment.

Not only is the right to earn a livelihood included as a property right, but individual business, occupations, or callings are also included in the right to liberty and the persuit of happiness. ALLEGEYER v. LOUISIANNA, 165 U.S. 578, 17 S. Ct. 427. It follows that the right to choose one's occupation includes the correlative right to be free from unlawful interference or control in the conduct of it. RUBSTRAT v. PEOPLE, 185 Ill: 133, 57 N. E. 41.

Obviously, in order for there to be a violation of the provision against depriving any person of his property without Due Process of Law, that person must have a "property" in the thing of which he is alleged to have been deprived, and the right to earn a livelihood constitutes such a right.

Suspension of issued licenses thus involves state action that adjudicates important interest of the licensee.

In such cases the licenses are not to be taken away without that procedural due process required by the 14th Amendment. SNIADACH v. FAMILY FINANCE CORP. 395 U. S. 337, 23 L. Ed 2d 349, 89 S. Ct 1820 (1969), GOLDBERG v. KELLY 397 U.S. 257, 25 L. Ed 2d 28, 90 S. Ct. 1011 (1970).

The issue it seems is whether procedural due process is afforded the licensee on the question of his conviction in a criminal case. Does there seem to be a rational basis for the legislature to demand revocation upon conviction. Relevant data from various and sundry studies performed by no less, the United States Department of Transportation,

National Highway Traffic Safety Administration indicate that the punitive approach taken to first offender has neither been productive nor did it bear any reasonable relationship to the problem traying to be controlled. Highway Safety Literature, U.S. Department of Transportation, National Highway Traffic Safety Administration, page 28, May 31, 1976:

> ALCOHOL ABUSE IN FIRST OFFENDERS ARRESTED FOR DRIVING WHILE INTOXICATED. An investigation designed to evaluate and manage the problem of the intoxicated driver was conducted in Philadelphia, Pennsylvania, from January 1973 through June 1974. A set of 15 questions designed to measure an individuals drinking pattern and its effect on one's social and economical functioning was administered to the 2,647 drivers who had been arrested in the city for the first time driving while intoxicated (DWI) and who had no previous major arrest record. All subjects were referred from the court system to the assessment program. About 58% of the offenders reported a constant regular abuse of alcohol. The highest percentage of problem drinking was found in the 20 to 24 age grout and the type of drinking typical at this stage decreased with increasing age. An overwhelming 93.5% of the first offenders arrested for DWI were male. Fifty-two percent of the sample were married, and married individuals showed significantly less alcohol impairment as a group than any non

married group. The DWI sample had a higher concentration of black persons than the population of the city. Blacks as a group exhibited more serious drinking patterns thant Whites and tend to become more serious drinkers at a later age than do Whites. The apparent lack of insight into the severity of their drinking problems and the almost non-existent motivation to obtain treatment indicate that some form of compulsory program will need to be instituted for these offenders. It is recommended that such a program be instituted for these offenders. It is recommended that such a program be designed to encourage more responsible use of alcohol, especially with regard to drinking and driving, rather than at total abstention.

by Eric W. Fine; Pascal Scoles; Michael J. Mulligan, West Philadelphia Community Mental Health Consortium, Philadelphia, Pennsylvania 19101

Publ: HS-017 850, Alcohol, Drugs, and Traffic Safety, Toronto, 1975, p169-74 1975; 18refs

Paper from the Proceedings of the International Conference (6th) held in Toronto, 8-13 Sep 1974.

Availability: In HS-017 850

Highway Safety Literature, U.S. Department of Transportation, National Highway Traffic Safety Administration, page 19, July, 1976.

DRINKING-DRIVING AND FATAL CRASHES: A NEW PERSPECTIVE. A discussion of the role of alcohol in fatal traffic accidents is presented. Although it is widely believed that 50% or more of the total traffic deaths are related to alcohol and that the problem drinker is responsible for 33% of all traffic deaths, there is no objective research to support these beliefs. It is suggested that as more sophisticated and objective information becomes available that proportion of fatal crashes involving alcohol in some casual manner manner will be found to be on the order of 25 to 35%. If a 30% figure is accurate, there must be other major factors causing traffic fatalities which are currently being ignored. Differences between drunken driving, involving a blood alcohol concentration (BAC) of o.10% or more, and driving with lower BAC levels must be recognized. Although available information shows that about 90% of drunken drivers and 80% of drivers with a positive BAC below 0.10% are responsible for their own crashes, more than 70% of sober drivers are also responsible for their own crashes resulting in death. Fatal accidents should be considered as being quite different from collisions in general, and they probably require different countermeasures. In addition, BACs below 0.05% are not related to collisions in general, and the level at which alcohol becomes a significant factor in fatal crashes, but alcohol in combination with other characteristics that make them high-risk drivers. Available literature indicates that at least 80% of all drinking drivers in fatal crashes have BACs of0.10% or higher and that more than half of all drinking drivers in fatal crashes have BACs of at least 0.15%

Using these figures to determine the percentage of fatal accidents in which alcohol plays a causal role shows that only about 30% of traffic deaths can be attributed to alcohol.

by Richard Sylman
Publ: Journal of Alcohol and Drug Education v21 n1 p1-10 (Fall 1975)
1975
Presented to the San Diego Summer School of Alcohol Studies, University of California at LaJolla, 26-30 Aug 1974.
Availability: See publication

II. SECTION 616 (a) (1) OF THE PENNSYLVANIA VEHICLE CODE CONSTITUTES AND OVERLY BROAD INVASION OF THE PROPERTY RIGHTS OF THE APPELLANT IN VIOLATION OF THE 1ST, 5TH, 9TH and 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION WITHOUT A RATIONAL BASIS OR IN THE ABSENCE OF A COMPELLING NEED FOR SUCH INFORMATION.

This Court has indicated that the Federal Constitution protects the rights of citizens to follow any lawful business, profession or occupation subject only to rational regulation by the government which is necessary to protect legitimate public interest. DENT v. WEST VIRGINIA 129 U.S. 114 (1889).

In studies provided by the United States Department of Health Education and Welfare, in the Second Special Report to the United States Congress on Alcohol and Health, June 1974, the variables reported by the government indicates that the problems of drinking and driving so contain an aggregate of factors that the mere data suggested from a conviction bears no meaningful relationship to the problem driver who is responsible for fatal accidents. In addition, in the preface to the Second Special Report to the United States Congrees on Alcohol and Health as provided by Charles Edwards, M.D. Assistant Secretary of Health, his conclusions are well directed at not only the Highway Safety Department of Pennsylvania but to society in general.

"The solution is that the treatment of alcoholic people and the prevention of alcoholism ultimately must be assumed by the same people who are treating every other kind of illness in our health car and human service systems."

We respectfully submit that no data anywhere justifies the deprivation of such a valuable property rights, a license, merely upon some administrative recognition of a conviction.

III. WHETHER A CERTIFID RECORD OF CONVICTION IS SO LACKING IN REASONABLENESS WITHOUT STANDARDS AND GUIDELINES SO AS TO VIOLATE THE APPELLANTS RIGHTS TO DUE PROCESS GUARANTEED BY THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

In the case of BELL v. BURSON, 402 U.S. 535, 29 L. Ed 2d 90, 91 S. Ct. 1586, the Court turned to the question of the proceedural due process which must be afforded the licensee on the question of liability.

In Pennsylvania, to be assured of due process in Court and identify himself as one convicted of Driving Under the Influence.

It may be noted that even the Pennsylvania Legislature recognized how such individuals under the criminal law could offer little in defense that a change made effective June 1977 provided that:

§ 3731. DRIVING UNDER INFLUENCE OF ALCOHOL

OR CONTROLLED SUBSTANCE. (a) Offense defined. A person shall not drive any vehicle while:

(1) under the influence of alcohol to a degree which renders the person incapable of safe driving.

(2) under the influence of any controlled substance, as defined in the act of April 14, 1972 (P.L. 233 No. 64), known as "The Controlled Substance, Drug, Device, and Cosmetic Act," to a degree which renders the person incapable of safe driving; or

(3) under the combined influence of alcohol and a controlled substance to a degree which renders the person incapable of safe driving.

(b) Authorized use not a defense. The fact that any person charged with violating this section is or has been legally entitled to use of alcohol or controlled substances is not a defense to any charge of violating this section.

(c) Certain arrests authorized. In addition to any other powers of arrest, a police officer is hereby authorized to arrest without a warrant any person who the officer has probably cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer.

(d) Penalty. Any person violating any of the provisions of this section is guilty of a misdemeanor of the third degree.

Even the Legislature recognized that the crux of the issue was safe driving and not a conviction under the old rule and test.

In addition, the provisions requiring revocation merely upon proof of a conviction is

lacking in reasonable standards and guidelines so as to infringe upon the Appellants rights of Due Process in violation of the 14th Amendment of the United States Constitution.

The fact that a person has been convicted of a Motor Vehicle violation while Driving Under the Influence cannot possibly be an excuse for barring from operation in the light of existing studies done on the alcoholic driver by the Department of Transportation itself.

The Court has indicated that the Federal Constitution protects the rights of citizens to follow any lawful business, profession, or occupation, subject only to rational regulation by the government which is necessary to protect legitimate public interests. SCHWARE v. BOARD OF BAR EXAMINERS, 353 U.S. 232 (1957).

The hearing provided for the Appellant in the consisted of his identification as the party convicted of Driving Under the Influence. At no time was there ever an evidentiary hearing on the facts surrounding the criminal conviction.

The hearing required by the Due Process clause must be "meaningful", ARMSTRONG v. MANZO, 380 U.S. 345, 552, 14 L. Ed 2d 62, 66, 85 S. Ct. 1187, and appropriate to the nature of the case. MULLANE v. CENTRAL HANOVER BANK AND TRUST CO., Supra at 313; 94 L. Ed at 872, 873.

For the reasons set forth above Appellant respectfully submits that the Supreme Court of Pennsylvania erroneously upheld the Commonwealth Court of Pennsylvania to fairly decide numerous questions, federal and substantial in nature and of public importance.

Respectfully submitted

STEPHEN COHEN, ESQUIRE
257 Chestnut Street
Sunbury, Pennsylvania 17801

Attorney for Appellant

March 3, 1977

APPENDIX A

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

PHILADELPHIA, 19107

November 8, 1976

Stephen Cohen, Esq.,
313 Arch Street
Sunbury, Pa. 17801

IN RE: William E. Martz,
Petitioner v. Commonwealth
of Pennsylvania, Department
of Transportation, Bureau
of Traffic Safety
No. 2689 Allocatur Docket

Dear Mr. Cohen:

This is to advise you that the Supreme Court has entered the following Order on the Petition for Allowance of Appeal and the Petition for Supersedeas, in the above captioned matter:

"November 3, 1976

Petition Denied

Per Curiam"

An application for Reconsideration of Denial of Allowance of Appeal must be prepared in the same manner as the original petition

(see Pa. R.A.P. 1111) must be confined to the grounds and must contain the certification set forth in Pa. R.A.P. 1123 (b) (1) and (2), and, in order to be timely, must be received within seven days after the date of mailing of this notice.

No answer to an Application for reconsideration of Denial of Petition for Allowance of Appeal will be received unless requested by the Supreme Court on its own motion.

Very truly yours,

Deputy Prothonotary

LEL:mb

CC: John L. Heaton, Esq.

APPENDIX B

IN THE COURT OF COMMON PLEAS OF NORTHUMBERLAND COUNTY, PENNA.

CIVIL ACTION - LAW DIVISION

DEPARTMENT OF TRANSPORTATION :

vs. : No. 299 December TERM, 1974

WILLIAM E. MARTZ :

O R D E R

AND NOW, April 22, 1975, the Court finds that the Appellant, William E. Martz, pleaded guilty to the charge of operating a motor vehicle while under the influence of intoxicating liquor, and that, therefore the revocation of his motor vehicle driving privileges was lawfully ordered under the provisions of Section 616 (a) (1) of the Vehicle Code. It is therefore ORDERED that his appeal

is dismissed and that the order of revocation of his license by the Secretary of the Department of Transportation is re-instated.

BY THE COURT:

/s/ MICHAEL KIVKO
Honorable Michael Kivko
President Judge

IN THE COMMONWEALTH COURT
OF
PENNSYLVANIA

WILLIAM E. MARTZ, *

Appellant *

* NO. 674 C.D. 1975

v. *

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, BUREAU OF TRAFFIC SAFETY *

BEFORE:

HONORABLE JAMES S. BOWMAN, President Judge
HONARABLE JAMES C. CRUMLISH, JR., Judge
HONORABLE HARRY A. KRAMER, Judge
HONORABLE ROY WILKINSON, JR., Judge
HONORABLE GLENN E. MENCER, Judge
HONORABLE THEODORE O. ROGERS, Judge
HONORABLE GENEVIEVE BLATT, Judge

ARGUED: January 7, 1976 - Harrisburg

OPINION

Opinion by Judge Crumlish, Jr. Filed: March 15, 1976

The Secretary of Transportation (Secretary) revoked the motor vehicle operating privileges of William E. Martz (Appellant) for one year. His appeal to the Court of Common Pleas was dismissed and he appeals that order to us.

Upon Appellant's plea of guilty to the charge of driving while intoxicated in violation of Section 1037 of the Vehicle Code (Code)[1], the Secretary, after receiving a certification of conviction, revoked Appellant's operating privileges for one year as mandated by Section 616(a) of the Code, 75 P.S. 616(a).

Acceding to Appellant's request, the Secretary conducted a hearing and the revocation was upheld. After a hearing de novo in the Court of Common Pleas, at which time the

---

[1]Act of April 29, 1959, P.L. 58, as amended, 75 P.S. 1037.

Secretary presented the record of Appellant's conviction in evidence, the revocation was affirmed.

Intially, we reminded Appellant that our review is of the order of revocation and not the criminal conviction which prompted the revocation. Commonwealth of Pennsylvania, Bureau of Traffic Safety v. Groat, ____ Pa. Commonwealth Ct. ____, 350 A. 2d 431 (1976). Where the court below, after a hearing de novo, orders revocation of operating privileges we must determine whether the findings are supported by competent evidence or whether there were errors of law. Civitello v. Commonwealth of Pennsylvania, Bureau of Traffic Safety, 11 Pa. Commonwealth Ct. 551, 315 A. 2d 666 (1974)

The certified record of a conviction of driving while intoxicated is sufficient to sustain an order of revocation.[2]

---

[2]Section 616(a) of the Code, 75 P.S. 616(a).

Appellant urges that the hearing conducted by the Secretary was a sham.[3] However, after reviewing the record made in the court below, we are satisfied that his interests were adequately protected there by counsel and that he had the opportunity to offer evidence. Therefore, the de novo hearing cured whatever procedural irregularities, if any, which may have existed during the Secretary's hearing. See Commonwealth v. Lehman, 8 Pa. Commonwealth Ct. 603 305 A. 2d 730 (1973).

Affirmed.

James C. Crumlish, Jr., Judge

---

[3]Appellant asserts that he was not given an opportunity to present rebuttal testimony, ask questions, or take notes.

APPENDIX D

SUPREME COURT OF THE UNITED STATES

NO. A-[illegible]

WILLIAM A. MARTZ,
Appellant

v.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
BUREAU OF TRAFFIC SAFETY

O R D E R

UPON CONSIDERATION of the application for counsel for appellant, IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including March 3, 1977.

/s/ William J. Brennan, Jr.
Associate Justice of the
Supreme Court of the United
States

Dated this 2nd day of
February, 1977

(9d)

APPENDIX E

IN THE SUPREME COURT OF THE

STATE OF PENNSYLVANIA

WILLIAM E. MARTZ, *
Appellant
*
vs. *NO. 2689
Allocatur Docket
*
COMMONWEALTH OF PENNSYLVANIA, *
DEPARTMENT OF TRANSPORTATION, *
BUREAU OF TRAFFIC SAFETY,
Appellee *

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

I. Notice is hereby given that WILLIAM E. MARTZ, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Pennsylvania State Supreme Court which denied the Allowance of Appeal from the Commonwealth Court of Pennsylvania, which affirmed the action taken by the Department of Transportation, Bureau of Traffic Safety, in revoking the driver's license of William E. Martz entered in this action on November 3, 1976.

(10e

Notice of Appeal to the Supreme Court of the United States was filed February 1, 1977 in the Supreme Court of Pennsylvania

This appeal is taken pursuant to United States Code Title 28 Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following: (1) The transcript of the proceedings before the Commonwealth Court of Pennsylvania in the above captioned matter. (2) The transcript of the proceedings before the Court of Common Pleas of Northumberland County in the above captioned matter. (3) The order of the Commonwealth Court and the order of the Pennsylvania Supreme Court.

III. The following questions are presented by this appeal: (1) Does the Bureau of Traffic Safety, Department of Transportation, Commonwealth of Pennsylvania, in their application of the law as mandated by the legislature, in Title 75 P.S.A. 616 (a) (1), which provides for revocation of operating privileges. Upon receiving a certified record from the Clerk of the Court of

proceedings in which a person pleaded guilty, entered a plea of nolo contendere, or was found guilty by a judge or jury, to the offense of driving under the influence, deny the Appellant his 5th, 9th, and 14th Amendment rights defined in the Constitution of the United States. (2) Did the legislature of Pennsylvania in seeking to effectively manage the problem of the drinking driver and concomittal effects upon the highways and unable to generate positive legislation, under the notion that if you can't pass a good law, pass a bad one, place upon the Department of Transportation by requiring revocation upon nature of conviction a statutory scheme neither necessary nor rational from which through its application by the Department denies the Appellant his 5th, 9th and 14th Amendment rights of the Constitution. (3) Does the statutory scheme for revocation of a driver's license for driving while intoxicated provide the necessary safeguards

for the protection of a valuable property rights to a person whose occupation or calling depends on that property right.

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Supreme Court, U. S.
FILED
MAY 16 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1976
No. 76-1220

WILLIAM E. MARTZ,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF TRAFFIC SAFETY,
Appellee

On Appeal From the Supreme Court of Pennsylvania.

MOTION PURSUANT TO RULE 16 TO AFFIRM ORDER OF THE SUPREME COURT OF PENNSYLVANIA OR IN THE ALTERNATIVE TO DISMISS APPEAL TO THIS COURT AND BRIEF FILED IN SUPPORT THEREOF

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ROBERT W. CUNLIFFE
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No.

William E. Martz,

Appellant

v.

Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety,

Appellee

MOTION PURSUANT TO RULE 16 TO AFFIRM ORDER OF THE SUPREME COURT OF PENNSYLVANIA OR IN THE ALTERNATIVE TO DISMISS APPEAL TO THIS COURT

The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety, by its undersigned counsel, respectfully represents:

1. That the appeal to this Honorable Court does not present a substantial federal question.

2. That it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

3. That the argument in support of substantiality of the questions raised is based in part on a Transportation

Department study which was not introduced below and is not a part of the record of this appeal.

WHEREFORE, The Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety, Appellee herein, respectfully requests that the Per Curiam Order of Supreme Court of Pennsylvania dated November 3, 1976, denying Appellant's Petition for Allowance of Appeal from the Commonwealth Court of Pennsylvania be affirmed or in the alternative that Appellant's Appeal to this Honorable Court be dismissed.

Respectfully submitted,
JOHN L. HEATON
Assistant Attorney General
ROBERT W. CUNLIFFE
Deputy Attorney General
ROBERT P. KANE
Attorney General
Attorneys for Appellee

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No.

William E. Martz,

Appellant

v.

Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety,

Appellee

BRIEF IN SUPPORT OF MOTION PURSUANT TO RULE 16

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1. History of the Case

On January 21, 1974, Appellant William E. Martz was convicted in the Court of Common Pleas of Northumberland County, Pennsylvania, of violating Section 1037 of the Pennsylvania Motor Vehicle Code, Act of April 29, 1959, P.L. 58, *as amended*, 75 P.S. 1037, driving while under the influence of intoxicating beverages.

On January 29, 1974, the Clerk of Courts of Northumberland County certified a record of the conviction to the Appellee Bureau of Traffic Safety as required by Section 1209(b) of the Vehicle Code, *supra*.

On April 23, 1974, the Director of the Bureau of Traffic Safety notified Appellant that as a result of the said conviction his operating privileges in Pennsylvania were being suspended for a period of one year, effective May 28, 1974, pursuant to Section 616(a) (1) of the Vehicle Code, *supra.* The notice in question afforded Appellant the opportunity for a departmental hearing which he requested by signing the notice and returning it to the Bureau on April 30, 1974. On May 9, 1974 the Bureau sent Appellant a notice of restoration of operating privileges pending outcome of the departmental hearing.

Departmental hearings were scheduled on two separate occasions, July 1, 1974 and September 24, 1974, and both times postponed in order to accommodate Attorney Stephen A. Cohen. A hearing was finally convened on October 11, 1974, in Harrisburg, Pennsylvania, and attended by Appellant, Attorney Cohen and a departmental hearing examiner.

On December 26, 1974, Appellant was again notified that his operating privileges were being revoked for a period of one year, effective January 30, 1975, pursuant to Section 616(a) (1) of the Vehicle Code, *supra.*

On January 20, 1975, Appellant by Attorney Cohen filed an appeal from the revocation in the Court of Common Pleas of Northumberland County and his operating privileges were again restored prior to the effective date of the revocation, this time on the basis of an order of supersedeas signed by the Honorable Michael Kivko on January 20, 1975. Hearing on the appeal was held March 24, 1975 and the Court by Judge Kivko entered an order dated April 22, 1975 dismissing the appeal and reinstating the order of revocation.

Appellant then appealed the order of Judge Kivko to the Commonwealth Court of Pennsylvania at No. 674 C.D. 1975. By opinion dated March 15, 1976, the Commonwealth Court by the Honorable James C. Crumlish, Jr. affirmed the order of the lower court.

Appellant then appealed the order of the Commonwealth Court of Pennsylvania to the Supreme Court of Pennsylvania at No. 2689 Allocatur Docket, 1976. By per curiam order dated November 3, 1976, the Supreme Court of Pennsylvania denied both Appellant's petition for allowance of appeal and his petition for supersedeas.

The Department then reinstated the one-year revocation, effective November 16, 1976. This was the fourth time the revocation had been imposed, although it had never actually gone into effect prior to this because of Appellant's various requests for hearings and appeals. Appellant still did not surrender his operator's license to the Department. Eventually the license was lifted personally by a member of the Pennsylvania State Police on January 21, 1977.

On April 26, 1977, Appellant requested the Supreme Court of Pennsylvania to grant him a writ of supersedeas pending disposition of his appeal to the Supreme Court of the United States. At this writing the petition has not been acted upon and his license remains in the Department with credit allowed toward the one-year revocation from January 21, 1977.

2. Argument for Appellee

(a) Appellant's right to procedural due process was not violated by the Department's revocation procedure.

Appellant's operator's license was revoked pursuant to Section 616(a) (1) of the Motor Vehicle Code, 75 P.S. 616(a) (1) which provides in pertinent part:

> "(a) Upon receiving a certified record, from the Clerk of Court, of any proceeding in which a person pleaded guilty, entered a plea of nolo contendere, or was found guilty by a judge or jury, of any of the crimes enumerated in this section, the secretary shall forthwith revoke for a period of one year from the date of revocation, the operating privilege of any such person:
>
> (1) Operating a motor vehicle or tractor while under the influence of intoxicating liquor. . . ."

Appellant has not contested from the start that he was convicted on January 21, 1974 of violating Section 1037 of the Vehicle Code, driving under the influence of intoxicating liquor. A certified record of the conviction, all that is necessary under the statute to sustain the revocation action, was presented at the departmental hearing and later made a part of the record of the appeal commencing at the initial stage in Northumberland County Common Pleas Court. Appellant had numerous opportunities, before the revocation even went into effect, to show that he was not in fact convicted of the offense which would have been his only legitimate defense to the revocation order. He, of course, failed to do so.

Appellant's reliance on *Bell v. Burson,* 402 U.S. 535, 91 S.Ct. 1586, 292 L.Ed. 90 (1971), is totally misplaced. That case held only that the state must afford a licensee an opportunity for a prior hearing on the question in issue (in that case liability for a motor vehicle accident) before the suspension goes into effect. In this case the only issue left to the department by Section 616(a) (1) was whether or not Appellant was in fact convicted of driving under the influence of intoxicating liquor. This Court stated in *Bell, supra:*

> "The alternative methods of compliance are several. Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the de novo judicial proceedings in the Superior Court." 402 U.S. 542-43.

The record of this case shows that the department afforded Appellant a departmental hearing in order to allow him to rebut the evidence of his conviction before the revocation went into effect. It shows further that he was afforded a hearing on the question in the Common Pleas Court while the revocation was stayed by order of Court.

While this Court indicated in *Bell, supra,* that either forum before the department or the courts would have been sufficient to comply with the due process clause, the record of this case actually shows that Appellant was afforded a hearing in both forums. A man who is able through administrative and judicial maneuvering to delay

a revocation initially set for May 28, 1974 until January 21, 1977 should not be allowed to complain of denial of judicial due process.

(b) The statute in question is not an overly broad invasion of the property rights of Appellant.

While Appellant couches his arguments in terms of procedural due process, it is apparent that his real complaint is that the statute in question is void on its face. It is his contention that it violates substantive due process for the state to revoke an operator's license on the basis of the fact that the licensee was convicted of the crime of drunk driving.

Such a holding would be totally unprecedented and would amount to an outright infringement on the police power of the state to regulate use of its highways in order to protect the public from persons who have abused their privilege to operate a motor vehicle.

Appellant's contention that the provision of the Vehicle Code providing for mandatory revocation of licenses of drunk drivers is unconstitutional is so unsubstantial as not to need further argument. Appellant does not cite a single case striking down a mandatory revocation statute on such grounds.

Appellant's only argument in support of his theory that the statutory scheme is irrational is based on a United States Department of Transportation sponsored study, dated May 31, 1976, which he says indicates that convictions for the crime of driving under the influence bear no

meaningful relationship to the problem driver who is responsible for fatal accidents. This study should not be considered by this Court since it was not introduced and made a part of the record below.

Appellee has had no opportunity to review its contents, cross-examine its author or offer testimony to the contrary.

However, even if the study in question was properly before this Court and its contents supported the proposition for which it is cited, it would still not follow that the mandatory revocation statute is unconstitutional. It is submitted that it is within the police power of the state to revoke the licenses of convicted drunk drivers regardless of whether statistics bear out that in doing so it actually promotes highway safety. Such action is sustainable under the police power as strictly punitive in nature.

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3. Conclusion

Appellee respectfully requests that the order of the Supreme Court of Pennsylvania be affirmed or in the alternative that the appeal to this Court be dismissed.

Respectfully submitted,
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